

Supreme Court, U. S.
FILED

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MICHAEL RODAK, JR., CLERK

No. 75-1455

**In the
Supreme Court of the United States**

OCTOBER TERM, 1976

**IN THE INTEREST OF SUSAN M. SUDLER, DAVID
SUDLER AND JOHN SUDLER, minors.
JANE duFRESNE A/K/A JANE SUDLER
and EUGENE duFRESNE,**

Petitioners-Appellants,

vs.

LOUIS SUDLER,

Respondent-Appellee.

**PETITION FOR WRIT OF CERTIORARI
TO THE ILLINOIS SUPREME COURT**

**LANCE HADDIX
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Suite #720
Chicago, Illinois 60602
Attorney for Petitioners**

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vs.
LOUIS SUDLER,
Respondent-Appellee.

**PETITION FOR WRIT OF CERTIORARI
TO THE ILLINOIS SUPREME COURT**

Jane and Eugene duFresne respectfully pray that a Writ
of Certiorari issue to review the order of the Illinois
Supreme Court entered December 22, 1975.

OPINION BELOW

The order of the Illinois Supreme Court was entered
summarily without opinion. It is included herein as
Appendix A. The opinion of the Appellate Court of Illi-
nois, Second District, is included herein as Appendix B.

JURISDICTION

The order of the Illinois Supreme Court was entered on November 24, 1975. The jurisdiction of the Court is invoked under Title 28 U.S.C. §1257(3).

QUESTIONS PRESENTED

1. Whether the trial court could assess costs and fees of the appellants' proceeds as it did: viz, whether the action of the trial court amounted to a taking of petitioners' property without due process of law.
2. Whether the proper procedure for assessing those costs and fees was followed.
3. Whether there was sufficient evidence presented to find the minor to be neglected.

STATEMENT OF THE CASE

On October 11, 1972, the State's Attorney for DuPage County, Illinois, filed a petition in the Juvenile Court of the Eighteenth Judicial Court of DuPage County, Wheaton, Illinois seeking to have petitioner Susan Sudler declared a neglected minor. At subsequent hearings, both the mother, Jane duFresne and the stepfather, Eugene duFresne were found to be in default, even though one John Woodward appeared on behalf of Mrs. duFresne. At the adjudication hearing, custody of the two boys, John and David, was returned to the duFresnes, but Susan was adjudged to be a neglected minor and was made a ward of the Juvenile Court to be placed temporarily at Sunnyridge Home for Children.

The present counsel appeared on behalf of the duFresnes on December 27, 1972. The mother was scheduled for dispositional hearing on February 17, 1973. On January

31, 1973, however, counsel for the father, Louis Sudler, appeared before the Court *ex parte*, in order to file a written answer to the State's oral motion for assessment of costs and further made an oral motion requiring the mother to pay certain funds to the Clerk of Court, for the maintenance of the children, such funds resulting from the sale of certain real estate. The court thereupon entered an order directing the mother, Jane duFresne, to so deposit \$3,799.00. Extensive conferences between counsel for both sides ensued. As a result, this order was vacated by agreement of counsel, and the mother, Jane duFresne was required by order of court to deposit said funds with the Chicago Title and Trust Company in escrow.

On June 8, 1973, an agreement reached by counsel for all parties was read into the record and adopted tentatively by all present, including the court.

On July 3, 1973, the mother, Jane duFresne filed a motion alleging that for purposes of negotiating and bargaining, misinformation had been submitted at the disposition hearing by the respondent father, Louis Sudler. At a hearing on the motion, counsel's request to conduct further discovery with regards to the financial condition of the respondent father was denied. An order for disbursement of funds was entered. A copy of said order is included herein as Appendix C.

On August 2, 1973, counsel for the respondent stepfather filed a motion to vacate the above order alleging, among other things, that the stepfather held an interest in the funds to be disbursed and that he had no legal obligation toward the minors herein. Said motion was denied. A copy of said motion and order is included herein as Appendix D.

REASONS FOR GRANTING THE WRIT

The Appellate Court of Illinois, Second District, ruled that 1) petitioner had waived the question of notice by entering into negotiations with the respondent father; 2) it would accept the trial court's judgment that petitioners were in fact not deceived by the respondent father with regards to his financial status; 3) that petitioner Eugene duFresne, as a joint tenant and having no legal obligation to support the minors in question, had other remedies to protect his interest in the escrowed funds other than through the instant juvenile proceeding; and 4) that Susan Sudler was in fact neglected. The Illinois Supreme Court affirmed summarily.

The decision of the Appellate Court apparently chose to ignore several familiar principles of law. In suggesting that the funds actually sequestered were only part of the proceeds from which the stepfather's co-interest could be realized, the Court totally set aside the familiar equitable principle of tracing. This doctrine would hold that the stepfather, with his right to follow the proceeds, has not only a right as against the depository, but an equitable property in the fund itself, and this doctrine is carried out into all of its legitimate consequences. Thus, the stepfather should not only be able to recover the money from the court, but should also be able to pursue it or its proceeds under any change of form, as long as it can be certainly identified, into the hands of third persons who have taken it. That is to say, the fund in this respect resembles a fund impressed with a trust. See 4 Pomeroy's Equity Jurisprudence §1280, p. 809 and included authority. This principle has generally been acknowledged in Illinois. Cf. *Moore v. Taylor*, 251 Ill. 468.

It is submitted that for the Trial Court to ignore a settled principle of equity in a taking of property amounts to an infirmity of Constitutional dimension.

The Appellate Court was also not impressed with the fact that both the State's and father's motions to assess costs and sequestering funds were made *ex parte* and without any showing by either moving party that such action was necessary. The Court asserts that this issue was waived by petitioner when she entered into negotiations with the opposing parties. Petitioner's mother's waiver was hardly "voluntary", for the impression of the *lis pendens* upon her only asset, the house, effectively held up the sale until the sequestration issue could be settled. In effect, the mother petitioner had no choice.

The Appellate Court thought petitioner's renewed discovery request was merely evidence of the petitioner's mother trying to get herself a better deal. This view can only be characterized as shallow reasoning when it is realized that petitioner and respondent had recently concluded a bitter divorce action in which petitioner had ample opportunity to fully discover the financial resources of respondent. In other words, it is reasonable to assume that Mrs. duFresne felt she had a good grasp on the financial standing of Mr. Sudler. When new information—such as the \$50,000 gift—came to light, she was actually surprised. It became apparent that she had endorsed the agreement on the basis of misinformation.

Taken together, the points of issue present a rather shameful departure from the principles of due process which normally apply to court orders which have the effect of depriving persons of property. Absent are the essential elements of notice, fair discovery and disclosure and observance of well-established rules of equitable jurisprudence.

Finally, the Appellate Court affirmed the finding of neglect. It points to the fight between the stepfather and the three children (without considering the role of Mrs. duFresne, the mother), a psychiatric report that does not appear in the record and which counsel has not seen, and the fact that Susan Sudler admitted that she needed supervision. Even a cursory examination of the record will reveal that Susan's admission was anything but voluntary. Without any sufficiency of evidence to substantiate these claims by the State, a finding of neglect should not be countenanced as a matter of law. *In re Nyce*, 1971, 131 Ill. App. 2d 481, 268 N.E. 2d 233; *In re Bartha*, 1969, 107 Ill. App. 2d 214, 245 N.E. 2d 779.

Important procedural and substantive questions are raised here which should be settled by this Court. For these reasons, Petitioners request that a Writ of Certiorari issue to review the decision of the Courts of Illinois.

Respectfully submitted,

LANCE HADDIX
33 North Dearborn Street
Suite #720
Chicago, Illinois 60602
Attorney for Petitioners

CERTIFICATE OF SERVICE

I, Lance Haddix, counsel for Petitioner, hereby certify that I have this 9th day of April, 1976, served three copies of the foregoing Petition for Writ of Certiorari upon Graham, Stevenson and Casey, 10 South LaSalle Street, Chicago, Illinois; Popejoy, Nelson, Lucas and Spear, 201 Naperville Road, P.O. Box 1057, Wheaton, Illinois 60187; Office of the State's Attorney, DuPage County, 240 East Willow, Wheaton, Illinois 60187; and DuPage County Probation Department, 201 Naperville Road, Wheaton, Illinois 60187 by depositing same, first class postage pre-paid, in the United States mail chute at 33 North Dearborn Street, Chicago, Illinois. All Parties required to be served have been served.

/s/ Lance Haddix

APPENDIX A

UNITED STATES OF AMERICA

State of Illinois)
) ss.
Supreme Court)

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the tenth day of November in the year of our Lord, one thousand nine hundred and seventy-five, within and for the State of Illinois.

Present: Robert C. Underwood, Chief Justice
 Justice Walter V. Schaefer
 Justice Daniel P. Ward
 Justice Howard C. Ryan
 Justice Thomas E. Kluczynski
 Justice Joseph H. Goldenhersh
 Justice Caswell J. Crebs

William J. Scott, Attorney General

William G. Lyons, Marshal

Attest: Clell L. Woods, Clerk

Be It Remembered, that, to-wit: on the 24th day of November 1975, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said court, had and entered of record, to-wit:

In the Interest of Susan M. Sudler, David Sudler and John Sudler, minors	}	Petition for Leave to Appeal from Appellate Court Second District 73-440 C 72-1472 C 72-1473 C 72-1474
Jane duFresne, a/k/a Jane Sudler and Eugene duFresne,		
No. 47816 vs.		
Louis Sudler,		
	Petitioners	
	Respondent	

And now on this day the Court having duly considered the Petition for Leave to Appeal herein and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies Leave to Appeal herein.

And it is further considered by the Court that the said Respondent recover of and from the said Petitioners costs by him in his behalf expended, to be taxed, and that he have execution therefor.

I, Clell L. Woods, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said court this 22nd day of December, 1975.

Clerk,
Supreme Court of the State of Illinois.

APPENDIX B

73-440

UNITED STATES OF AMERICA

State of Illinois)
Appellate Court) ss:
Second District)

At a session of the Appellate Court, begun and held at Elgin, on the 2nd day of December, in the year of our Lord one thousand nine hundred and seventy-four, within and for the Second District of Illinois:

SECOND DIVISION

Present—Honorable L. L. Rechenmacher, Presiding
Justice

Honorable Walter Dixon, Justice

Honorable Thomas J. Moran, Justice

Loren J. Strotz, Clerk

William A. Klusak, Sheriff

Be It Remembered, that afterwards, to wit: On June 2, 1975 the Opinion of the Court was filed in the Clerk's office of said Court, in the words and figures following, viz:

73-440

In The

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

SECOND DIVISION

In The Interest Of
SUSAN M. SUDLER, a minor
No. C-72-1472
In The Interest Of
DAVID SUDLER, a minor
No. C-72-1473
In The Interest Of
JOHN SUDLER, a minor
No. C-72-1474

} Appeal from the
Circuit Court of
DuPage County
for the Eighteenth
Judicial Circuit
of Illinois.

MR. PRESIDING JUSTICE RECHENMACHER delivered the opinion of the court:

In a Juvenile Court proceeding the involved minor, Susan M. Sudler, was found to be a neglected minor and made a ward of the Juvenile Court. This is an appeal from an order of the Juvenile Court sequestering the proceeds of the sale of a house to pay certain costs resulting from such proceeding. The appellants (Jane du Fresne (a/k/a Jane Sudler) and Eugene du Fresne, mother and step-father, respectively, of the above minors) also contend there was not sufficient evidence to justify the court's finding that Susan M. Sudler was a neglected minor.

This controversy grows out of a protracted and bitter divorce action. The mother of the involved minor, Jane du Fresne, and Louis Sudler, were married in 1954 and after a stormy marriage divorced in 1968. They had three children, Susan born in December, 1955; David born in 1957, and John born in 1961. Custody of the children was apparently awarded to the mother following the

divorce, but in April, 1972, after further litigation, custody of the children was awarded to the father, Louis. The mother appealed and this court stayed the custody order pending disposition of the appeal. Thereupon, the children were returned to the custody of the mother and were in her home, with her present husband, Eugene du Fresne, on October 10, 1972, when the incident occurred which triggered this case and its subsequent appeal. (Shortly after the incident in question Mrs. du Fresne dismissed her appeal as to the custody of the children so that the legal custody returned to Louis Sudler.)

On October 10, 1972, John Sudler, the youngest of the Sudler children, then about 12 years old, was punished by his step-father by being beaten with a leather strap for not doing his school homework. The step-father, apparently with the approval of Mrs. du Fresne, also threatened to cut John's hair off, or at least a lock of it. The older boy, David, then summoned his sister, Susan, and they all three began to fight with the step-father. In the course of the melee the step-father was struck with a heavy wooden object which caused his head to bleed and Susan was kicked and pummelled by the step-father. Susan told one of the boys to call the police and he did so. As a result of this fracas the younger children, John and David, after a court hearing, were returned to the custody of the Sudlers but Susan was adjudged to be a neglected minor and was made a ward of the Juvenile Court and placed temporarily at Sunny Ridge Home for Children.

At a subsequent hearing the wardship of Susan was continued. On oral motion of the State's Attorney to assess the costs of care and shelter against the parents, the father, Louis Sudler, moved that such costs of care and shelter, as well as attorney's fees for the attorney appointed to represent Susan, be assessed against the mother, Jane du Fresne, contending that he was not responsible for the fracas which initiated the court proceeding. The du Fresnes were in the process of selling

the house awarded to Jane du Fresne in the Sudler v. Sudler divorce settlement and Louis Sudler moved the court to sequester a sufficient amount from the proceeds of the sale of the house to pay said expenses. The court subsequently ordered that the amount of \$3977 be sequestered from the funds of Jane du Fresne arising out of the sale of said house, pending the further order of the court.

Following this the respective attorneys for Louis Sudler and the du Fresnes entered into negotiations for the purpose of allocating these costs. Pursuant to an agreement between them an order was entered by the court requiring the payment of \$3977, already deposited in escrow with the Chicago Title & Trust Co. by du Fresnes, to the County and to the court appointed attorney, as previously approved. The balance of the expenses in the amount of \$385 was to be assumed by Louis Sudler, as well as the obligation to support and pay for the college education of the children thereafter.

This order is the basis of the appeal in this case. It is contended by the appellants that the order disposing of the proceeds should be vacated (a) because proper notice was not given to the du Fresnes of the motion to assess costs or the motion to sequester the funds; (b) because the du Fresnes were induced to agree to the substance of the order because of a misrepresentation by Louis Sudler that he had no funds to contribute, when actually he had adequate funds; and (c) the order sequestered funds belonging to Eugene du Fresne, who had a half interest in the proceeds of the house sale, thus making the order void as to half of the proceeds since Eugene du Fresne had no obligation as a step-father to contribute to the costs.

After carefully reviewing the record we are of the opinion that the question of notice of the motions was waived by Eugene du Fresne's attorney when he entered into negotiations with the Sudlers' attorney regarding the allocation of the costs. The record clearly indicates that

the attorney appeared on behalf of Eugene as well as Jane du Fresne, when he entered his appearance, and his subsequent negotiations as to the form and content of the order allocating the costs and disposing of the escrow fund, preclude any objection to the order in question on the ground of proper notice.

As to the contention that the du Fresnes were deceived when Louis Sudler contended he was without funds to pay the costs in question, it is unlikely they were deceived as they claim. Mrs. du Fresne knew her former husband's background very well and knew that he came from a wealthy family. It is more likely that they decided to settle because the sequestering of the funds had put a cloud on the title to the house and was delaying the completion of the sale. Whatever the reason for the agreement, however, they did enter into a stipulated arrangement through their attorney and they are bound by it. In any event the court, after hearing arguments on the point, did not believe that the du Fresnes had been deceived, nor apparently did the court feel imposed upon by any alleged misrepresentation made by Louis Sudler during the negotiations. We cannot substitute our judgment for the court's as to whether or not a fraud was practiced on the court.

The final contention with regard to the order complained of is that it attaches funds not responsive to the debt in question, since the amount sequestered represents a joint fund and the court was without power to sequester Eugene du Fresne's half of the fund. He argues that, as a step-father, he had no statutory liability for the costs incurred as a result of the Juvenile Court's orders and dispositions on behalf of the minors.

We believe this argument is based on a misconception as to the nature of the fund in question. While it was undoubtedly true that the house which was sold was in joint tenancy between Eugene and Jane du Fresne at the time of the sale, this did not automatically constitute the fund deposited as a result of the court's order a joint

fund. The obligation was Jane du Fresne's, the court's order was directed to her obligation as a parent, and whether the other joint tenant did or did not protect himself against dilution of the funds so deposited, the character of the fund remained the same: a security for the payment of the debt agreed to by both parties and disposed of accordingly in the court's order. The fund, thus, was not joint property. It was deposited for a specific purpose—to pay off Jane du Fresne's obligation—and the previous condition of the title to the real estate has no bearing on the court's order or the ownership of the fund.

Lastly, the appellants contend there was not sufficient evidence to have found the minor to be a neglected minor. A neglected minor is defined under the Juvenile Court Act (Ill. Rev. Stat. 1973, ch. 37, par. 702-4, §2-4(1)(b)) as:

“(1) Those who are neglected include any minor under 18 years of age

(b) whose environment is injurious to his welfare or whose behavior is injurious to his own welfare or that of others.”

The finding of the court that Susan Sudler was a neglected minor (she was then just under 17) was based on the incident which triggered the petition to make her a ward of the court, the fact that her mother admitted that the girl was beyond her control, and a rather exhaustive psychological report which indicated that Susan was rebellious, disoriented and acting out sexually. According to the report Susan also admitted taking some drugs from time to time. Susan herself admitted the need for the court's supervision and was fully agreeable to being made a ward of the court. Considering this evidence we cannot say that the court's finding that Susan was a neglected minor was not justified. The cases cited by the appellants on this point are not applicable here. *In re Interest of Nyce*, 131 Ill. App. 2d 481, was a case involving the custody of an infant and the jurisdictional facts were clearly lacking on which to deprive the mother of custody and

there was evidence of personal prejudice based on a limited contact with the mother. The case of *In re Dependency of Bartha*, 107 Ill. App. 2d 214, (a decision of this court), was decided on the basis of clearly inadequate evidence which was conflicting and the findings were made without proper consideration of all the relevant facts. Neither of these cases resemble the case before us.

The judgment is affirmed.

Judgment affirmed.

THOMAS J. MORAN and DIXON, JJ., concur.

UNITED STATES OF AMERICA

State of Illinois,)
Appellate Court,) ss.
Second District,)

I, Loren J. Strotz, Clerk of the Appellate Court, in and for said Second Judicial District of the State of Illinois, and the keeper of the Records and Seal thereof, do hereby certify that the foregoing is a true, full and complete copy of the Opinion of the said Appellate Court in the above entitled cause of record in my said office.

In Testimony Whereof, I have set my hand and affixed the seal of the said Appellate Court, in Elgin, in said State, this 2nd day of June, A.D. 1975.

/s/ Loren I. Strotz

Clerk Appellate Court, Second District.

APPENDIX C

State of Illinois)
) ss.
County of Du Page)

IN THE CIRCUIT COURT FOR THE EIGHTEENTH
JUDICIAL CIRCUIT
DU PAGE COUNTY, WHEATON, ILLINOIS

In the interest of
SUSAN SUDLER,
a Minor

No. C72-1472

ORDER

This matter coming before this Court on the motion of the guardian, Marguerite Hayes, for reimbursement of cost; and on the motion of Charles Popejoy for acting as attorney for the three minor children, Susan, David and John Sudler;

And the Court finding that a fair and reasonable fee for Mr. Charles Popejoy is \$1,785; and that the County of DuPage has incurred cost in the amount of \$2,577.38 through June 30, 1973;

And the Court being further advised that there is on deposit with the Chicago Title and Trust Company, subject to further order of this Court, the sum of \$3,977; and further that the Respondents, Louis Sudler, Jr. and Jane DuFresne have entered into an agreement, this order containing its contents;

It Is Therefore Ordered, Adjudged and Decreed as follows:

One: That Chicago Title and Trust Company is directed to pay to Charles Popejoy the sum of \$1,785.

Two: That Chicago Title and Trust Company is di-

rected to pay to the DuPage County Probation Service the sum of \$2,192.

Three: That from this day forward, Louis Sudler, Jr. is required to provide the support for the children, David, John and Susan Sudler, provided they are in his custody or, insofar as Susan is concerned, in his custody or that of the Probation Department. That this obligation shall continue until an emancipation event which is described as follows: Marriage, fulltime employment, military service, attaining age eighteen; and insofar as Susan Sudler is concerned, attaining age eighteen or no longer being a ward of this Court, whichever later occurs, or being married, employed full-time or being in the military service. Louis Sudler Jr. shall not be required to provide support for Susan Sudler if she leaves the jurisdiction of this Court without permission of the Court or DuPage County Probation Service.

Four: That Louis Sudler, Jr. shall be required to pay to the DuPage County Probation Service the sum of \$385.38 at a rate to be agreed upon by the Service and Louis Sudler, Jr.

Five: That Louis Sudler, Jr. shall be required to provide a four year college education for the children, Susan, David and John, while said father or the DuPage Probation Service has the right of custody of said children provided there are no trusts established to pay these expenses and provided further that the children have the desire and aptitude to attend college; that Louis Sudler Jr. has the financial ability to bear this expense, and the college education represents four years to be completed within six years following the child's leaving high school. The decision regarding the college to be attended by the children shall be made by Louis Sudler, Jr. except that such approval shall not be reasonably withheld.

/s/ Robert A. Nolan
Judge Robert A. Nolan

Approved:
/s/ John J. Casey
/s/ Lance Haddix
/s/ Charles Popejoy by Robert R. Nelson

APPENDIX D

State of Illinois)
) ss.
County of Du Page)

**IN THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, WHEATON, ILLINOIS
COUNTY DIVISION**

In The Interest Of
SUDLER, SUSAN
A Minor

No. C-72-1772

MOTION

Petitioner, Eugene du Fresne, the stepfather of the above minor, by and through her attorneys, Zeitlin and Schwab, move this Honorable Court for leave to file this Motion and for the setting of a date certain for a hearing on the merits regarding payment of expenses for the above-named minor, and in support of said Motion state the following:

1. That heretofore, on July 3, 1973, an Order was entered directing payments from Chicago Title and Trust Company to cover expenses incurred in this cause.

2. That your Petitioner is, together with Jane du Fresne, joint owner of the aforementioned funds held by Chicago Title and Trust Company under their Trust, No. 497399.

3. That no proper notice or opportunity to defend was given your Petitioner concerning the proceedings in this cause which resulted in an Order divesting him of his property without due process.

4. That your Petitioner should not be charged with the support, care, or maintenance of any of the minors

involved in this action which are not his children and toward whom he has assumed no obligation.

Wherefore, your Petitioner prays that the Court vacate the Order entered July 3, 1973 and set a date certain for a hearing on these and other related matters.

Eugene du Fresne
By: /s/ Lance Haddix

Zeitlin and Schwab
33 North Dearborn Street
Chicago, Illinois 60602
Randolph 6-9646
Attorneys for Petitioner

Case # C-72-1472

Presiding Judge Nolan

Name Susan M. Sudler

Date 8-23-73

Insert, circle or check appropriate answers on the following lines, pertaining to individuals present in Court.

Attorney Casey for Respondent Sudlers (F)

Attorney Haddix for Resp. Du Fresne (M) (S.F.)

Attorney Popejoy for Resp. children

Probation Dept. Mrs. Schnabel

Disposition of Case: Motion to Vacate Order of 7-3-73
Denied

State's Attorney Gambini
Court Clerk T. L. Treiber